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State Emergency Communications Committee
159 Orange Street
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Federal Communications Commission
Washington, D.C. 20554

In the Matter of EB Docket No. 04-296 Review of the Emergency Alert System

In reply to the Notice of Proposed Rulemaking the following observations are respectfully submitted by a career broadcaster; I have been employed in radio for 32 years and have chaired the New Hampshire State Emergency Communications Committee (SECC) for 12 years.

I. INTRODUCTION

1. This Notice of Proposed Rulemaking (NPRM) examines the Emergency Alert System (EAS), and seeks comment on whether EAS in its present form is the most effective mechanism for warning the American public of an emergency and, if not, on how EAS can be improved….

   Implicit in the language of the NPRM is the underlying thought that EAS is no longer adequate for notifying the public via the broadcast medium. The language acknowledges that large numbers of people might not be tuned to radio or television during an emergency and that other forms of mass communication need to be employed. I believe the federal government needs to resolve this distinction before it addresses any other potential change. If a broadcast warning system is to remain - and I think it should – then I believe EAS can be enhanced. If a broader system of government communicating direct to every American is envisioned, then I don't believe EAS will be adequate. In the latter case I believe it will be necessary for the federal government to provide funding for whatever new architecture is chosen, as the broadcast industry has already expended substantial sums on EAS.

3. Along with its primary role as a national public warning system, EAS and other emergency notification mechanisms, are part of an overall public alert and warning system, over which the Federal Emergency Management Agency (FEMA) exercises jurisdiction. EAS use as part of such a public warning system at the state and local levels, while encouraged, is merely voluntary….

   One of the major flaws of the EAS is that it was implemented as a voluntary program. The wide latitude allowed each broadcast station has resulted in spotty and inconsistent coverage. Many states, including New Hampshire, continue to base their EAS Plans on a daisy-chain system similar to the old Emergency Broadcast System (EBS). This sets the stage for stations farthest from the point of origination being denied access to emergency information. Primary and Local Primary stations have no incentive to program their EAS encoders to pass all 34 of the original 1994 EAS event codes, or the 21 new event codes approved in 2002. If they filter out a given code, then stations further down the daisy chain are denied access to the information.

   At the same time, if EAS participation is to be mandated, it is necessary to sharply curtail the number of EAS event codes. In particular, the National Weather Service originates the vast majority of EAS traffic. While frequent messaging is part of their mission, it is incompatible with EAS because of the frequency of use. Excessive EAS activations desensitize listeners and viewers. The New Hampshire EAS Plan recommends that participants not include weather-related Statements or Watches. We believe radio and television stations provide sufficient weather programming through the course of normal programming such that anything other than a weather Warning is unnecessary for EAS.

4. There are similar questions about the technical capabilities of EAS. For example, since it relies almost exclusively on delivery through analog radio and television broadcast stations and cable systems, is EAS, in the current communications universe, outdated….

   EAS is not outdated, but it is not properly used. While created as a means of national communication, the vast majority of EAS traffic is for state and local emergencies. The system could be enhanced considerably if state and local government were more invested in it. We have found state and local officials to be reluctant to utilize EAS and less than enthusiastic about training their people how it works. Broadcasters are not emergency managers. In a real crisis, they are willing to provide their airwaves to inform the public but they should not be responsible for originating alerts.

II. BACKGROUND

B. Federal/State Program Responsibility

5. FEMA. Activation of the national-level EAS rests solely with the President. The Stafford Act authorizes the President to make provisions for emergency preparedness communications and dissemination of warnings to governmental authorities and the civilian population in areas endangered by disasters. This authority has been delegated to DHS' Undersecretary for Emergency Preparedness and Response as director of FEMA. FEMA acts as the White House's executive agent for the development, operations, and maintenance of the national level EAS and is responsible for implementation of the national level activation of EAS, tests, and exercises.

   FEMA has done a poor job of visibly living up to its mission of testing and exercising. Since EAS was implemented in 1994 there have been no national tests. With advance publicity and notification the broadcast industry, and general public, could be prepared for a scheduled test to see if a communication pipeline can actually be set up from the White House to the public. Many broadcasters interpret the lack of national testing as a tacit indication that the national level of EAS would never work if needed.

   Further, I am disappointed that the FCC has taken a backseat approach to the last two U.S. Justice Department Amber Conferences (Dallas in August 2003 and Columbus in September 2004). The Amber Alert concept is a valuable service that could be used as a shining example of how EAS works, but the FCC was not represented on the Justice Department panels and was noticeably absent from the discussions.

6. NOAA. As the originator of emergency weather information, NOAA, through its component agency, the NWS, plays a significant role in the implementation of EAS at the state and local level. Through its All-Hazards Network, NWS originates approximately 80 percent of all EAS alerts. The NWS supplies local alerts to broadcast and cable entry points designated in approved EAS state and local plans. Many broadcast stations and cable systems also directly monitor NWS transmissions and relay the NWS messages to their audiences over EAS. In order to ensure that there is equipment interoperability between EAS and NWS Specific Area Message Encoding (SAME) technology used by NOAA Weather Radios, the Commission's rules specifically provide that EAS event codes must be compatible with the codes used by the NWS SAME encoder.

   The NWS plays a vital role in New Hampshire's EAS Plan. We receive excellent cooperation and they are listed in our Plan as one of three authorized originating agencies; they generate our Required Monthly Test every third month and conduct their own weekly test every Wednesday. But their mission and SAME technology are not totally compatible with EAS. NWS is supposed to generate a lot of weather information but not all of it constitutes emergency communication. An improved EAS would de-emphasize the volume of weather activations by limiting the number of weather-related event codes.

7. SECCs and LECCs. State Emergency Communications Committees (SECCs) and Local Emergency Communications Committees (LECCs), comprised of emergency management personnel and volunteers from industry, may be established in each state and territory….

Since New Hampshire is one of the smallest states, we find there is no need for the LECC. Our experience has shown that the SECC structure is adequate, but we have no objection to employing LECCs where required. It should be noted that many of New Hampshire's 234 towns do not have 24/7 law enforcement coverage. The largest law enforcement agency with statewide authority is the State Police and they function as one of three authorized agencies that can activate EAS. Any town that needs to access EAS can do so easily by calling State Police.

II.C. EAS Structure and EAS Codes

1. Primary Entry Points (PEPs). The EAS is essentially a hierarchal, trickle down distribution system. FEMA has designated 34 radio broadcast stations as Primary Entry Point (PEP) stations. At the request of the President, FEMA distributes ``Presidential Level'' messages to these PEP stations. As the entry point for national level EAS messages, the PEP stations have a National Primary (NP) EAS designation, and are monitored in turn by other stations in the hierarchical chain.

   New Hampshire has found the effectiveness of PEP to be marginal. The three closest PEP stations to our state are WBZ Boston (59 miles), WABC New York (249 miles), and WHAM Rochester, NY (424 miles), all AM stations. Only WBZ can be monitored with a usable air signal, and only a handful of New Hampshire stations can pick it up. We are taking steps to install specialized equipment to monitor WBZ at the New Hampshire Bureau of Emergency Management so that PEP transmissions can be relayed to our entire broadcast community.

   During 12 years as Chairman of the New Hampshire SECC I have never received one word of communication from the FCC about the role of, or importance of, PEP in our state emergency planning. If Presidential communications exist between the White House and PEP stations, they have never been tested to the most distance points of the EAS.

2. The United States is divided into approximately 550 EAS local areas, each containing a key EAS source, called the Local Primary One (LP-1). The LP-1 monitors its regional PEP station for Presidential messages, and serves as the point of contact for local authorities and NWS officials to activate EAS. Other stations and cable systems in the area monitor their LP-1 station, and if a Presidential message is sent, they are required to air the message received from their LP-1 station….

   We have found the LP-1 structure to be just as susceptible to weakness as the PEP program. When EAS was implemented in 1994 we strategically chose seven LP-1s for their location and signal strength. Partly due to the sweeping changes which resulted from the Telecommunications Act of 1996, all but one of the LP-1s have changed ownership and several are unattended for at least part of the broadcast day (usually nights and weekends). Most of the new ownerships have had considerably less commitment to EAS than the originals. That greatly reduces the effectiveness of those stations as LP-1s. When no one is in the building there is no way of verifying an EAS test or activation has been received and/or forwarded. When RMTs have failed it often takes days to track down the reason, in part because so few stations have a qualified engineer in-house. Most owners have chosen to limit the number of EAS event codes their LP-1 passes.

   As a result of the effects of consolidation and ownership relaxation, we have attempted to redesign the structure of our statewide EAS monitoring assignments. Wherever geographically possible, we ask stations to monitor one or more originating sources directly rather than an LP-1. This increases the likelihood that all participating stations have access to the same information at the same time and reduces the number of rebroadcasts of marginal EAS audio messages.

III. DISCUSSION

III.A. General Considerations

3. We note initially that two public/private partnerships have studied and addressed this issue extensively. The Media Security and Reliability Council (MSRC) is an industry-led Federal Advisory Committee created by the Commission and comprised of leaders from the radio, television, multi-

channel video, public safety and disabled communities. The Partnership for Public Warning (PPW) was incorporated in January 2002 as a not-for-profit public- private partnership, whose goal is to promote and enhance effective, integrated dissemination of public warnings and related information that will save lives, reduce losses and speed recovery from acts of terrorism, accidents and natural disasters. Both PPW and MSRC advocate upgrading, not replacing, EAS

I concur with the recommendations of both organizations.

III.B. Federal/State Program Responsibility

4. We also seek comment about several aspects of state and local EAS. First, we note that some parties assert that voluntary (as opposed to mandatory) participation in state and local EAS alerts impairs the credibility of the entire EAS. They claim that it makes no sense to mandate participation only on a national level in a system that has never issued a Presidential alert and is instead used to deliver vital information about life-threatening local, state, and regional events. These parties believe that the voluntary nature of participation in state and local EAS alerts also makes it difficult to find enough dedicated people to participate with system implementation. As we noted in the Localism NOI, the dissemination of emergency information is a critical and fundamental component of broadcasters' local public service obligations, and we accordingly seek comment on whether voluntary participation in EAS is consistent with those obligations. We seek comment on whether the Commission should adopt rules to require broadcasters to make their facilities available to local emergency managers? If so, what should be the nature and scope of any such rules? In their comments, parties should address the issue of whether there would be adverse effects from imposing some uniform requirement on broadcasters rather than allowing them to continue to make voluntary arrangements with local officials? Conversely, should incentives be provided to encourage the participation of broadcasters and cable operators? What incentives could be provided? To avoid what broadcasters and cable operators might view as a burdensome level of program interruptions, should there be a federal rule establishing a standard regarding when state emergency managers may and must activate EAS and, if so, what should that standard be? Should use of any of the existing voluntary EAS codes be mandated? Should the federal government monitor EAS usage to determine a standard?

   This single paragraph contains the most potential impact on broadcasters. I support mandatory participation in EAS but only if the list of event codes is trimmed significantly. Broadcasters and the public must know that the only time they will see and hear the EAS is when there is a serious, life-threatening emergency. Overuse of EAS, especially for weather-related announcements, is a problem.

   Great care must be taken to avoid a situation where any, and every, over-zealous local emergency manager can activate EAS. Local emergency planners often have no concept of the distance covered by certain broadcast stations, or the number of out-of-area viewers and listeners who will be be affected. If a truck carrying hazardous chemicals overturns in a small town, the nearest radio or TV station may be miles away and have a coverage area far in excess of the area of desired evacuation. In theory, FIPS codes should filter out many stations that don't need to rebroadcast the information but it will be almost impossible to adequately train every local emergency planner in their proper use. There is also a serious question of liability should a local manager demand EAS access resulting in unexpected consequences. Ultimately each broadcast licensee has an interest and responsibility to protect its license and an accidental public panic caused by an over-anxious emergency planner could be difficult to defend.

   Federal monitoring of EAS usage will be very difficult to achieve. Under the old EBS, stations and/or SECC chairmen were urged to send a postcard to the FCC each time the system was activated. Under EAS it is often impossible for a SECC chairmen to be aware when a station has activated the system. In New Hampshire, I would have to phone virtually 100 radio and television stations (and countless cable systems) on a daily basis to stay on top of their EAS activity. Perhaps an enhanced EAS could include an electronic return receipt of some kind, sending notification to a designated agency when a particular station has activated EAS and for what purpose.

4. We also seek comment on whether Commission rules that require states with EAS plans to file those plans with the Commission for approval have little impact because Commission rules do not require that states have plans in the first instance. Further, no current guidelines or standards exist for the structure/creation of state or local EAS plans. We seek comment on whether the Commission should adopt rules requiring state and/or local EAS plans. We further seek comment on whether the Commission should establish national guidelines and standards for the structure of such plans….

   One strength of EAS is that it allows different technologies and communications backbones to be utilized in state and local plans based on what resources are available. This flexibility should be encouraged. A specific standard is probably unworkable. But requiring states to institute EAS Plans is a good idea. Broadcasters already do their part. State government participation could stand improvement. Perhaps incentives or legal requirements are necessary to bring state emergency planners to the table.

   New Hampshire addresses the adjacent state issue by negotiating one monitoring assignment in each state for stations located close to borders

5. ….We seek comment on whether the Commission should adopt rules to require all EAS participants to monitor the NWS where signals are available entities….

   This requirement would be pointless since there are so many areas where NWS NOAA-weather radio signals are not available. New Hampshire has four NOAA stations, all with relatively low power. Many areas of our small state simply can't monitor NOAA for a usable rebroadcast signal.

III.C. EAS Structure and EAS Codes

1. …..Should the originating local agencies transmit alerts directly to as many stations and cable systems as possible without intervening relay stations? Should other technologies, such as satellite delivery systems, be used as part of a backbone to distribute the alert to entry points….

   Originating agencies should absolutely transmit alerts to as many outlets as possible without relying on a daisy chain structure. New Hampshire has done that by restructuring monitoring assignments. Satellite delivery is certainly an avenue to be explored, but as a backup to other methods of transmission. Several state SECCs have adopted ComLabs EM-net system, which is satellite-delivered. While that particular system certainly offers capabilities that could enhance EAS, I am hesitant to rely solely on a satellite that could go out of service and take considerable time to replace. EM-net requires approximately $5,000 worth of hardware per station that is basically worthless in an unattended radio or cable station.

2. In the 2002 Report and Order, the Commission amended Part 11 of the Commission's rules by, inter alia, adding new state and local event codes, most of which are for non-weather events such as child abductions (Amber Alerts) and new location codes…. We seek comment regarding whether circumstances have changed such that the Commission should adopt rules that require broadcasters and cable operators to upgrade their EAS equipment so that it is capable of receiving and transmitting all current event and location codes, including those adopted in the 2002 Report and Order. If such upgrading of EAS equipment should be required, how much time should broadcasters and cable operators have to replace their EAS equipment….

   The phenomena surrounding child abductions and the success of the Amber Alert concept should be a model for emergency notification. It can also be held up as an example when trying to convince state and local government to further embrace EAS. Stations have had plenty of time to upgrade their EAS software to accommodate the new 2002 event codes. A short time frame should be required for stations to upgrade.

   The New Hampshire Association of Broadcasters took a proactive role, hiring a contract engineer to visit all member stations and provide a free software upgrade as a benefit of membership. We

implemented a statewide Child Abduction Emergency protocol in cooperation with state and local law enforcement in April 2003.

III.D. Expanding EAS Requirements to Other Services

1. In the 1994 First Report and Order on EAS, the Commission encouraged - but did not require - EAS participation by digital broadcasters. In the Localism NOI, however, we noted that digital technologies have evolved, and can allow broadcasters to provide emergency information in innovative ways. For example, using digital technology, broadcast stations can pinpoint specific households and neighborhoods at risk, with minimal burden on the available spectrum. Accordingly, we seek comment on how digital technology can be used to enhance warnings, and to what extent broadcast stations currently make use of that technology. We also recently reached the tentative conclusion that EAS rules should apply to all audio streams broadcast by a radio station, such as IBOC. We seek comment on whether we should adopt rules extending EAS obligations to other digital broadcast media, such as DBS, DTV, and satellite DARS services. Commenters should also address whether, when television stations turn off their analog signals as part of the DTV transition, they could leave a market devoid of an EAS participating broadcaster?….

   I believe that as local television stations become digital they should continue to discharge the same EAS responsibility they had as analog stations. As long as their audience remains local, rather than national, their role hasn't changed.

III.E. Alternate Public Alert and Warning Mechanism

5. Finally, to what extent does an effective public warning system depend on the consumer electronics equipment that receives the warning?….

   Devices that automatically turn on during an emergency alert are a good idea. They probably should contain override options consumers can use to defeat the function if desired. The extent to which an effective public warning system depends on such devices is a government decision, not one for the broadcast industry.

III.F. Public Warnings and Alerts for Individuals with Disabilities and Individuals for Whom English is a Second Language

1. Notifying Persons with Hearing and Vision Disabilities. Any consideration of best methods to contact the public during an emergency must address the needs of persons with disabilities. It is the policy of the United States for federal agencies to consider persons with disabilities in their emergency preparedness planning. According to the Department of Commerce, one in five Americans is disabled and one in ten is severely disabled. Fifty million people have some type of long lasting condition or disability, three million of whom have sensory disabilities involving sight or hearing.

   Radio is a useless medium for deaf people, but there is a problem for deaf people who watch television. Current messages generated by the EAS digital data stream provide little visual detail and impart only the most basic information (nature of emergency, geographic region affected, and timeframe). An enhanced EAS should make provisions for more text-intensive messages on television and cable stations.

6. Emergency Warning for Non-English Speakers. We should also consider the needs of people with primary languages other than English when considering the best method of contacting the public during an emergency. In order to ensure that foreign language audiences are alerted, the Commission's EAS rules provide that EAS announcements may be made in the same language as the primary language of the station. We seek comment of the efficacy of these rules….

   The largest city in New Hampshire is Manchester, with a population of about 100,000. The market is served by no foreign-language radio or television stations. According to the Manchester School District, there are 72 languages spoken by students in the system (including Kahna, Bosnian, Vietnamese, Somali, Farsi, Arabic and two dialects of Chinese). The largest non-English speaking

population in the schools is Spanish (about 30-40%). It is hard to conceive of an EAS enhancement robust enough to truly notify ALL members of the public during an emergency.

III.G. Other Issues

2. Location of EAS Equipment. In the 2002 Report and Order, the Commission modified its rules to exempt satellite/repeater stations which rebroadcast 100% of their hub station from the requirement to install EAS equipment, provided the hub station complies with existing National level EAS equipment installation, activation and testing regulations. We acknowledge that this practice removes EAS equipment from the satellite/repeater stations and thereby precludes their participation in the State or local EAS activations via the EAS network. We seek comment on the impact this practice has or will have on any proposed changes to EAS or public warning systems….

   In situations where New Hampshire radio stations have satellite/repeater stations we have negotiated agreements so the central originating signal airs all EAS traffic for all geographic areas served by the satellite/repeater operations. For example, New Hampshire Public Radio operates a statewide network based at an FM station in Concord. The network consists of FM frequencies in Keene, Hanover and Berlin, plus FM translators in Nashua, Littleton and Dover. Basically, the Concord station maintains one EAS unit in Concord and it is programmed to accept FIPS codes for the entire state. While this sometimes results in excessive EAS traffic, it is a workable way to get around the satellite/repeater exemption.

3. Testing. FEMA conducts weekly closed circuit tests of the PEP system by sending signals to EAS equipment at each PEP station site. However, no on-air tests of the PEP system ever have been conducted. All broadcasters and cable operators are required to conduct EAS weekly and monthly tests to ensure their EAS equipment is in operating condition. Should comprehensive periodic testing of the entire national EAS system from the PEP stations on down to state and local broadcast stations and cable systems be required? If so, how often should such testing occur? Should a special national level test code be adopted for this purpose, and should a post-test report be required? Should these national tests be in addition to the current testing requirement? Would having too many tests become a public nuisance leading to ignoring EAS alerts by the public? Additionally, we seek comment on whether the required monthly tests adequately evaluate the state-wide distribution of EAS alerts and, if not, what method of testing should be required.

   The PEP system should definitely be tested on a national basis, perhaps on a well publicized schedule. A new event code for a national test is unnecessary. With advance FCC coordination, a RMT could be replaced by a national test once or twice a year. Too many tests are already a public nuisance because the current requirement for all licensees to conduct RWTs doesn't accomplish anything. It only proves they can interrupt programming and make a receipt print from their EAS hardware. The real test of the system's efficiency would be if an actual test message is sent, relayed and rebroadcast in a timely fashion. Perhaps a decrease in RWTs and an increase in RMTs would result in better trained personnel on both the origination and relay end of the system.

4. Training. Some broadcasters and cable operators state that the EAS system and equipment are difficult to learn and use during actual emergencies and that the infrequent use of the equipment results in staff members being unable to remember how to use it when necessary. Additionally, lack of EAS training for emergency management personnel is a concern. We seek comment on whether additional training resources should be provided to emergency managers and, if so, what these materials should include. Should there be periodic mandatory EAS training of broadcast station and cable system personnel? Should emergency managers receive mandatory education and training regarding how and when to utilize warning systems? Who should provide such education and training? Is there a need to educate the public about the EAS and public warning? If yes, who should be responsible for such education….

   Lack of training is a larger issue among emergency managers than among broadcast personnel. Perhaps DHS or FEMA should take on this task. Our experience has shown that the SECC or state association of broadcasters offering to train state personnel is not well received. SECCs and state

associations are in a good position to offer ongoing training to individual station staffs, but if a licensee chooses to train in-house they should be allowed to do so. There is no demonstrated need to educate the public. They are already well attuned to the two-tone EAS signal and know to pay attention when they hear it.

5. Small Operators. Many of the topics discussed above would likely require participating services to incur additional costs. While large companies may have the resources to absorb equipment upgrades and staff, small business entities may not. Should the level of participation required be dependent on the size of the participating entity? How would predicating participation based on company size affect the usefulness of EAS? Should assistance be provided to small businesses? Should we consider government or other funding assistance to small entities?….

   The size of an emergency isn't dependent on the size of a station or marketplace. The level of participation should be uniform throughout the broadcast industry, especially if EAS is made mandatory. As stated earlier, if an entirely new architecture for national warning is adopted to replace EAS then assistance should be provided to all stations. Federal funding would certainly be required to achieve maximum implementation.

6. Enforcement. The Commission has been aggressively enforcing the Commission's EAS rules. In 2003, for example, the Enforcement Bureau took approximately 80 EAS enforcement actions. Nonetheless, some broadcasters have failed to install or properly maintain EAS equipment. The base forfeiture amount set in the Forfeiture Policy Statement and section 1.80 of the rules for an EAS violation is $8,000. We seek comment on whether we should increase the base amount or otherwise impose higher forfeitures in this area, and on whether there are additional ways to better ensure compliance. We also seek comment on whether we should seek legislation from Congress to increase the maximum forfeitures in this area from the current $32,500 for a single violation or day of a continuing violation and maximum of $325,000 for a continuing violation.

   If this NPRM results in making EAS participation mandatory, rather than voluntary, at the local level then some sort of fine structure remains logical. Surely seeking legislative sanction to impose a fine of up to $325,000 for failure to maintain functioning EAS equipment is unnecessarily punitive and would likely force many stations off the air and out of business.

IV. CONCLUSION

1. We initiate this proceeding to establish a record on how the Commission can best facilitate the implementation of EAS as part of an effective public alert and warning system.

   With some enhancements, and renewed training at both the broadcast station and state emergency planning levels, EAS can continue to be an effective mechanism for informing the public who utilize broadcast services. If the federal government intent is to cast a wider net to include people who are not listening to radio or watching television at any given moment, an entirely new architecture is probably required.